

PART 785—ENFORCEMENT

Sec.

785.1 Scope and definitions.

785.2 Violations of the Act subject to administrative and criminal enforcement proceedings.

785.3 Initiation of administrative proceedings.

785.4 Request for hearing and answer.

785.5 Representation.

785.6 Filing and service of papers other than the Notice of Violation and Assessment (NOVA).

785.7 Summary decision.

785.8 Discovery.

785.9 Subpoenas.

785.10 Matters protected against disclosure.

785.11 Prehearing conference.

785.12 Hearings.

785.13 Procedural stipulations.

785.14 Extension of time.

785.15 Post-hearing submissions.

785.16 Decisions.

785.17 Settlement.

785.18 Record for decision.

785.19 Payment of final assessment.

785.20 Reporting a violation.

AUTHORITY: United States Additional Protocol Implementation Act of 2006, Pub. Law No. 109–401, 120 Stat. 2726 (December 18, 2006) (to be codified at 22 U.S.C. 8101–8181); Executive Order 13458 (February 4, 2008).

SOURCE: 73 FR 65128, Oct. 31, 2008, unless otherwise noted.

§ 785.1 Scope and definitions.

(a) *Scope.* This Part 785 describes the sanctions that apply to violations of the Act and the APR. It also establishes detailed administrative procedures for certain violations of the Act. Violations for which the statutory basis is the Act are set forth in § 785.2 of the APR. BIS investigates these violations, prepares charges, provides legal representation to the U.S. Government, negotiates settlements, and initiates and resolves proceedings. The administrative procedures applicable to these violations are described in §§ 785.3 through 785.19 of the APR.

(b) *Definitions.* The following are definitions of terms as used only in part 785 of the APR. For definitions of terms applicable to parts 781 through 786 of the APR, unless otherwise noted in this paragraph or elsewhere in the APR, see part 781 of the APR.

The Act. The U.S. Additional Protocol Implementation Act of 2006 (Pub-

lic Law 109–401, 120 Stat. 2726 (December 18, 2006)).

Assistant Secretary for Export Enforcement. The Assistant Secretary for Export Enforcement, Bureau of Industry and Security, United States Department of Commerce.

Final decision. A decision or order assessing a civil penalty, or otherwise disposing of or dismissing a case, which is not subject to further administrative review, but which may be subject to collection proceedings or judicial review in an appropriate Federal court as authorized by law.

Office of Chief Counsel. The Office of Chief Counsel for Industry and Security, United States Department of Commerce.

Recommended decision. A decision of the administrative law judge in proceedings involving violations of part 785 that is subject to review by the Secretary of Commerce, or a designated United States Government official.

Report. For the purposes of part 785 of the APR, the term “report” means any report required under parts 783 through 786 of the APR.

Respondent. Any person named as the subject of a letter of intent to charge, a Notice of Violation and Assessment (NOVA), or order.

Under Secretary, Bureau of Industry and Security. The Under Secretary, Bureau of Industry and Security, United States Department of Commerce.

§ 785.2 Violations of the Act subject to administrative and criminal enforcement proceedings.

(a) *Violations—(1) Refusal to permit entry or access.* No person may willfully fail or refuse to permit entry or access, or willfully disrupt, delay or otherwise impede complementary access, or an entry in connection with complementary access, authorized by the Act.

(2) *Failure to establish or maintain records.* No person may willfully fail or refuse to do any of the following:

(i) Establish or maintain any record required by the Act or the APR;

(ii) Submit any report, notice, or other information to the United States Government in accordance with the Act or the APR; or

§ 785.3

15 CFR Ch. VII (1–1–16 Edition)

(iii) Permit access to or copying of any record by the United States Government that is related to a person's obligations under the Act or the APR.

(b) *Civil penalties*—(1) *Civil penalty for refusal to permit entry or access.* Any person that is determined to have willfully failed or refused to permit entry or access, or to have willfully disrupted, delayed or otherwise impeded an authorized complementary access, as set forth in paragraph (a)(1) of this section, shall pay a civil penalty in an amount not to exceed \$25,000 for each violation. Each day the violation continues constitutes a separate violation.

(2) *Civil penalty for failure to establish or maintain records.* Any person that is determined to have willfully failed or refused to establish or maintain any record, submit any report or other information required by the Act or the APR, or permit access to or copying of any record related to a person's obligations under the Act or the APR, as set forth in paragraph (a)(2) of this section, shall pay a civil penalty in an amount not to exceed \$25,000 for each violation.

(c) *Criminal penalty.* Any person that is determined to have violated the Act by willfully failing or refusing to permit entry or access authorized by the Act; by willfully disrupting, delaying or otherwise impeding complementary access authorized by the Act; or by willfully failing or refusing to establish or maintain any required record, submit any required report or other information, or permit access to or copying of any record related to a person's obligations under the Act or the APR, as set forth in paragraph (a) of this section, shall, in addition to or in lieu of any civil penalty that may be imposed, be fined under Title 18 of the United States Code, be imprisoned for not more than five years, or both.

§ 785.3 Initiation of administrative proceedings.

(a) *Issuance of a Notice of Violation and Assessment (NOVA).* Prior to the initiation of an administrative proceeding through issuance of a NOVA, the Bureau of Industry and Security will issue a letter of intent to charge. The letter of intent to charge will advise a respondent that BIS has conducted an investigation. The letter will

give the respondent a specified period of time to contact BIS to discuss settlement of the allegations set forth in the letter of intent to charge. If the respondent does not contact BIS in the time period specified in the letter of intent to charge, the Director of the Office of Export Enforcement, or such other Department of Commerce representative designated by the Assistant Secretary for Export Enforcement, may initiate an administrative enforcement proceeding under this § 785.3 by issuing a NOVA.

(b) *Content of a NOVA.* The NOVA shall constitute a formal complaint and will set forth the alleged violation(s) and the essential facts with respect to the alleged violation(s), reference the relevant statutory, regulatory or other provisions, and state the maximum amount of the civil penalty that could be assessed. The NOVA also will inform the respondent of the requirement to request a hearing pursuant to § 785.4 of the APR.

(c) *Service of a NOVA.* Service of the NOVA shall be made by certified mail or courier delivery with signed acknowledgment of receipt. The date of signed acknowledgment of receipt shall be the effective date of service of the NOVA. One copy of each paper shall be provided to each party in the delivery. BIS files the NOVA with the Administrative Law Judge (ALJ) at the same time that it is sent to the respondent. The ALJ, in turn, will place the case on its docket and will notify both the respondent and BIS of the docket information.

§ 785.4 Request for hearing and answer.

(a) *Deadline for answering the NOVA.* If the respondent wishes to contest the NOVA issued by BIS, the respondent must submit a written request for a hearing to BIS within 15 business days from the date of service of the NOVA. If the respondent requests a hearing, the respondent must answer the NOVA within 30 calendar days from the date of the request for hearing. The request for a hearing and the respondent's answer to the NOVA must be filed with the Administrative Law Judge (ALJ), along with a copy of the NOVA, and served on the Office of Chief Counsel,